

STATE OF MICHIGAN
COURT OF APPEALS

WILLIAM E. KASBEN,

Plaintiff-Appellant,

v

BERYL W. HOFFMAN,

Defendant-Appellee.

UNPUBLISHED

May 30, 2006

Nos. 247297;253201;254295

Leelanau Circuit Court

LC No. 96-003816-DO

AFTER REMAND

Before: Whitbeck, C.J., and Jansen and Bandstra, JJ.

PER CURIAM.

The present matter stems from an overly long-drawn-out divorce action between plaintiff William Kasben and defendant Beryl Hoffman. The basic facts and procedural history in this now ten-year-old matter can be found in our previous attempts to put this case to rest.¹ In this opinion, we hope to finally accomplish that goal by resolving the last lingering issue: the amount of credit to which Kasben is entitled for the sale of the marital and Boone Farms, which will in turn finally dispose of \$125,989.98 in escrowed funds left over from Hoffman's bankruptcy.

In our last remand to the trial court, we directed that the trial court "determine, through additional factual findings if necessary, the amount of credit to which Kasben is entitled for the sale of the marital *and* Boone Farms." That is, we found it necessary to remand the matter "for factual findings by the trial court regarding how the sale of Boone Farm actually affected the credit owed to Kasben and the amount that he was entitled to from the escrowed funds."

The trial court refused to award any credit to Kasben, or as the trial court phrased it, "award the Plaintiff another dime," because of his "outrageous behavior" throughout the scores of proceedings involved in this case. However, we accept, as the only relevant answer to our

¹ *Kasben v Hoffman (Kasben III)*, unpublished per curiam opinion of the Court of Appeals, issued January 12, 2006 (Docket Nos. 247297; 253201; 254295); *Kasben v Hoffman (Kasben II)*, unpublished per curiam opinion of the Court of Appeals, issued March 24, 2005 (Docket Nos. 247297; 253201; 254295); *Kasben v Hoffman (Kasben I)*, unpublished opinion of the Court of Appeals, issued November 30, 2001 (Docket No. 224551).

query to the trial court in our last remand, the trial court's finding that the net payment from the sale of Boone Farm received by the bankruptcy trustee, including interest earned on the proceeds, was \$268,929.74. The trial court cannot now disclaim Kasben's entitlement to the credit for the Boone Farm because in its October 2003 and August 2005 orders, the trial court clearly determined that Kasben was entitled to compensation from the sale in Hoffman's bankruptcy proceeding of *both* the marital farm and the Boone Farm. Despite the trial court's apparent conclusion that rulings by a predecessor judge purportedly disallowed a credit for the Boone Farm, the record reveals that the trial court was put on notice of these rulings prior to its October 2003 ruling. Nevertheless, the trial court ruled that Kasben was entitled to a credit for both sales, and this ruling has since then been relied on in two opinions of this Court. Hence, the law of the case doctrine barred the trial court from making different factual findings on remand. For the same reason, we further disregard the trial court's attempt to factor in the various bankruptcy court expenses because it previously rejected the argument that Kasben was responsible for expenses incurred by Hoffman in bankruptcy.

According to the trial court, the net payment from the sale of Boone Farm received by the bankruptcy trustee, including interest earned on the proceeds, was \$268,929.74. Adding this to the trial court's previous finding that the net payment from the sale of the marital farm was \$330,000, we conclude that the total net proceeds to the trustee were \$598,929.74. Applying either formula adopted by the trial court in its October 2003 and August 2005 decisions, we conclude that Kasben is entitled to the full amount of the escrowed funds, \$125,989.98.

We therefore remand and direct the trial court to enter a final order ruling that the \$81,534.90 disbursed to Hoffman and her attorney by the trial court's October 2003 order be returned to Kasben. We share the trial court's frustration with this difficult case. Particularly in light of this case's complicated nature, we applaud the trial court's work in seeking to bring the matter to conclusion. We do not retain jurisdiction.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Richard A. Bandstra